1962 to the date of his death on the 14th April 1963 is also a highly inflated claim. In the first place, the claim is based on the assumption that the deceased's salary was $301.50 per mensem when in fact it was $240.50. In the second place, according to the evidence, the deceased was in receipt of his full salary up till the 17th of February 1963. He died two months later. Having been a government servant since 1945, he was presumably paid a pension during the remaining two months of his life. No evidence was called to prove the difference between the deceased's salary and pension and this court cannot be expected to procure the necessary evidence for the plaintiff who is represented by counsel. I therefore reject the claim under item (c).

Again with regret, I have to reject the claim for $1,200 under item (d) for extra nourishment for want of strict proof. I shall, however, allow the item of $120 for travelling expenses under item (e).

The total amount I shall therefore award as special damages is $760.00.

There will be judgment, therefore, for the plaintiff for $9,797.00 and costs.

Judgment for the plaintiff.

Solicitors: *Singh & Co.; N. Sharma.*

PUBLIC PROSECUTOR v. FOO JUA ENG

[A.Cr.J. (Raja Azlan Shah J.) December 18, 1965]

[Kuala Trengganu — Criminal Appeal No. 12 of 1965]

Criminal Law and Procedure — Trial — Meaning of proof beyond reasonable doubt — Assisting in carrying on a public lottery — Common Gaming Houses Ordinance, 1953.

The respondent was charged with the offence of assisting in carrying on a public lottery. The respondent was found by the police in a room about three feet from a dressing table on which the exhibits were found. The learned magistrate acquitted the respondent as he held that there was no physical possession of the exhibits disclosed.

Held: the duty of the prosecution is to prove its case beyond reasonable doubt but not beyond the shadow of a doubt and in this case the learned magistrate should in view of the physical proximity of the respondent to the exhibits have found that there was a case for her to answer.

Case referred to:—

(1) *Miller* v. *Ministry of Pensions* [1947] All E.R. 372.

CRIMINAL APPEAL.

Mohamed bin Ya'acob (Deputy Public Prosecutor) for appellant.

Anthony Wilson for the respondent.

Raja Azlan Shah J.: This is an appeal by the learned Deputy Public Prosecutor against the decision of the learned magistrate who, at the end of the prosecution case, acquitted and discharged the respondent without calling upon her defence. The respondent was charged with assisting in carrying on a public lottery, an offence punishable under section 4(1)(c) of the Common Gaming Houses Ordinance, 1953. The facts of the case are as follows.

On information received, P.W.1, a gazetted Senior Police Officer, raided a top-floor room of house No. 19, Jalan Masjid, Kuala Trengganu, together with a police inspector. On approaching the said room of the said house, respondent was seen some three feet from the dressing table on which exhibit P1 was lying. On seeing P.W.1 and the inspector, both of whom were in mufti, respondent tried to close the door, but it was eventually forced open by P.W.1.

In his grounds of decision the learned magistrate came to the conclusion that there was no physical possession on the facts disclosed. He based his conclusion on the fact that exhibit P1 was recovered from the dressing table some three feet away from the respondent and there was lack of evidence as to how the said exhibit came to be on the table or when or by whom they were left there. The facts speak for themselves, and it is for the learned magistrate to draw the necessary inference of physical possession. With regard to the aspect as to how the exhibit came to be on the dressing table, to my mind the learned magistrate has misdirected himself. What the prosecution has to accomplish in this case is whether it has proved its case beyond reasonable doubt but not beyond the shadow of a doubt. As was stated by Denning J. (as he then was) in *Miller* v. *Ministry of Pensions*: (1)

> "Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice".

With regard to the mental element, the learned magistrate rightly directed his mind that knowledge or consciousness would depend on the surrounding circumstances. However, he failed to direct his mind adequately on the facts. He directed his mind to the circumstance when the respondent tried to close the door on P.W.1. But he failed to consider the other circumstance which, taken together, may well be that the element of possession was proved. That circumstance is the physical proximity of the respondent to the exhibit in question.

In view of the case as a whole, I am satisfied that the learned magistrate has misdirected himself as to fact and law. I would

therefore allow the appeal and order a new trial before another magistrate.

Appeal allowed. New trial ordered.

Solicitors: *Wilson & Co.*

LAM SOON CANNERY CO. v. HOOPER & CO.

[F.C. (Wee Chong Jin C.J. (Singapore), Tan Ah Tah and Ong Hock Thye F.JJ.) December 21, 1965]

[Singapore — Federal Court Civil Appeal No. 110 of 1964]

Reciprocal Enforcement of Judgments Ordinance, (Cap. 18) s. 3(1) — Registration of judgment obtained in United Kingdom — Discretion of the Court — Reciprocal Enforcement of Judgment — Rules, 1938, r. 9(1) — Rules referring only to s. 3(1) of the Ordinance — Rule ultra vires the Ordinance — Circumstances of the case to be considered before exercising discretion to register judgment.

Practice and Procedure — Foreign judgment — Registration of — Discretion of judge.

This was an appeal against the decision of the High Court in Singapore ([1965] 1 M.L.J. 135) dismissing an application by the appellants to set aside an order of the court in Singapore that a judgment received by the respondents against the appellants in the High Court in England be registered in the Singapore court under the provisions of section 3(1) of the Reciprocal Enforcement of Judgments Ordinance. The learned judge of the High Court in Singapore held that all he had to decide was whether it was just and convenient that the judgment should be registered in Singapore having regard to the grounds advanced for setting it aside. He evidently felt himself bound by rule 9(1) of the Reciprocal Enforcement of Judgments Rules, 1938 to limit his inquiry strictly to the grounds set out in section 3(2) of the Ordinance.

Held: (1) rule 9(1) is *ultra-vires* the Ordinance in so far as it had the effect of denying to the judge the discretion vested in him by section 3(1) of the Ordinance;

(2) the learned judge was wrong in that he felt himself precluded by rule 9(1) from exercising his discretion on the grounds of justice and convenience;

(3) in the circumstances of this case (where the appellants had been held to be in breach of contract in that they submitted false bills of lading indicating that goods had been shipped in May 1951 when in fact the goods were shipped in June, 1951) and in view of the fact that in arranging for the bills of lading in this case to be antedated the appellants had acted on the request of the respondents, the registration of the judgment should be set aside.

FEDERAL COURT.

J. Grimberg for the appellants.

C. L. Duff for the respondents.

Cur. Adv. Vult.

Ong Hock Thye F.J.: This appeal raises questions of some complexity and difficulty. It is an appeal against a decision of the High Court in Singapore, given on November 9, 1964, dismissing an application by the appellants to set aside an order of the court in Singapore, made on March, 31, 1964, that a judgment recovered by the respondents against the appellants in the Queen's Bench Division of the High Court of Justice in England be registered in the Singapore court under the provisions of section 3(1) of the Reciprocal Enforcement of Judgments Ordinance (Cap. 18). The sum involved is £39,862.10.5, equivalent to $340,538.56, and costs. The judgment registered had been obtained in England in proceedings making an arbitration award an order of the Queen's Bench.

The facts, or so much thereof as the learned judge considered to be material for the purposes of the application before him, were succinctly stated by him as follows:

> "For the purposes of this application, it is, I think, unnecessary for me to embark upon a detailed analysis of the facts involved in the arbitration proceedings except to observe that there were three contracts for the sale of a quantity of copra belonging to the applicants by Hooper & Co. The applicants were clearly in breach of contract in that they submitted false bills of lading indicating shipment in May, 1951 when in fact the goods were shipped in June, 1951. Hooper & Co. had sold the copra to a firm 'N' which in turn sold it to a firm 'B' which in turn sold the whole or part of it to a firm 'A'. (I think that for the purposes of this judgment it is unnecessary to set out their full names). As a natural consequence of the discovery of the false documents there were proceedings which 'boomeranged' from 'A' to 'B', from 'B' to 'N' and then from 'N' to Hooper & Co. On their view of the contract, Hooper & Co. considered that they were entitled to be recompensed by the applicants for such losses as they had been required to bear."

As will appear later in this judgment, the question whether, "in all the circumstances of the case" the Singapore court "thinks it is just and convenient" that the English judgment should be enforced here, will have to be exhaustively canvassed. A more detailed statement of the material facts in the history and background of this case would, therefore, be necessary unless the merits of the application of these appellants are to be restricted purely to questions of law, as Winslow J. appears to have limited himself in dealing with the application. I shall accordingly recite the relevant facts, adding those which had been passed over.

In the affidavit dated April 20, 1964 of Mr. Whang Tar Choung, a partner of Lam Soon Cannery Company, he had recounted the events that took place. I shall confine myself to the statements of fact which are not open to dispute. Early in 1951 the appellants had entered into three contracts, Nos. 51/1201, 51/1202 and 51/1219, for the sale of 500, 500 and 300 tons of copra for the gross price of £148,100, in each case less 2%. The appellants had in hand at all relevant times the goods to be shipped against these contracts. They duly made arrangements to ship them on the vessel VERCORS sailing from Singapore in March, 1951. In those days shipping space was notoriously difficult to procure on account of the Korean war and that for Naples, in any event, was extremely limited.